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properly required in the construction of the terms of a contract, which have been chosen after negotiations and consideration of their effect by the parties and which are presumed to correctly describe their rights and liabilities; whereas in a will, which is solely the expression of the testator's intention, a more liberal rule of construction is adopted in order to prevent the defeat of his purposes. There is nothing in the contract of insurance as such, which would warrant a court in giving to the word "children" any other than its ordinary meaning. So interpreted, it excludes grandchildren—that is to say, children of a child who has predeceased its mother, the primary beneficiary, and necessarily leads to the conclusion that only those children take who survive their mother. Under this kind of insurance clause, where the aim is to protect the wife and children after the death of the insured, it seems more consonant with reason to say that when the contractual relation with the mother ceases by her death, they who were her children at this moment are the only ones whom it is intended to protect and should be the only ones to assert and enforce an interest as substituted parties in the place of their mother.

P. H. R.

PROPERTY—WILLS—DEPENDENT RELATIVE REVOCATION—GIFTS TO CHARITIES—The doctrine of dependent relative revocation of wills is one which from its very nature involves many difficulties in application. It is not surprising, therefore, that the cases show a great amount of uncertainty and of inconsistency. Arising, as it did, in the Court of Chancery at a comparatively early period,¹ this doctrine has exerted a profound influence on the courts both of England and of this country, and, while the tendency, particularly in the American courts, has been to limit its application as narrowly as possible without departing from established authority, still the doctrine vigorously persists. Stated broadly, the doctrine may be said to be, that where a testator revokes a will, wholly or in part, in reliance on a supposed state of facts and those facts are really non-existent, the revocation is inoperative because it was conditioned upon the existence of the supposed facts.

A recent case illustrating the tendency of the courts to restrict the operation of the doctrine is that of *Ely v. Megie*,² where the New York court refused to apply it. In that case the testator had by a codicil in 1909 left the residue of his estate to be divided among eight charitable associations. In 1911 he executed a second codicil, wherein he in terms revoked that part of the codicil of 1909, and substituted therefor, *inter alia*, bequests of \$100,000 each to four of the original eight legatees, these legacies being expressly subject to

¹ *Onions v. Tyrer*, 2 Vern. 742 (1717).

² *Ely v. Megie*, 219 N. Y. 112, 113 N. E. 800 (1916).

abatement before the other bequests of the will and codicil. The trial justice found as facts that the testator's property had been largely increased between 1909 and 1911 by a bequest of over \$1,000,000 left him by his brother, and that it was the testator's intention to modify the bequests of 1909 by limiting them to \$100,000 and not wholly to revoke the earlier bequests. The testator having died before the expiration of two months, the bequests to charitable associations in the codicil of 1911 were invalid under the New York statute. It was urged that this was a proper case to apply the doctrine of dependent relative revocation so as to reinstate the codicil of 1909; but the court held that that codicil had been absolutely revoked in spite of the failure of the bequests in the revoking codicil.

The cases where the doctrine has been invoked seem to fall into the following classes:

(1) Where the earlier will or codicil has been destroyed by one of the physical acts allowed by the statutes. In these cases the act of destruction is an equivocal act, and the intention is properly a matter for inquiry, for such acts should have no validity unless coupled with an intent to revoke. But in applying the doctrine, the courts go further than this and inquire whether, there being an intention to revoke at the time, that intention is based on a supposed state of facts which do not in reality exist.³

(2) Where the revocation is by a later will or codicil expressly revoking the earlier one, but stating certain supposed facts as the reason for that revocation.⁴ In such cases practically all jurisdictions agree in applying the doctrine. It is, however, subject to two important qualifications: first, that the revoking codicil must clearly state a reliance on a belief in the supposed facts, mere doubt not being sufficient;⁵ secondly, that where the facts are such as to be peculiarly within the testator's own knowledge and for which he need not rely on information obtained from others, the doctrine has no application.⁶

(3) Where the testator has cancelled or obliterated a particular legacy or devise in a will and attempted to substitute another, the substitutions being void because improperly executed. Here, again, it is well settled that the doctrine should be applied.⁷

(4) Where a revoking instrument is itself revoked, on the supposition that this will revive a former will.⁸

³ *Onions v. Tyrer*, *supra*; *Dancer v. Crabb*, L. R. 3 P. & D. 98 (1873).

⁴ *Campbell v. French*, 3 Ves. Jr. 321 (1797); *Doe v. Evans*, 10 A. & E. 228 (1839).

⁵ *Attorney-General v. Lloyd*, 1 Ves. Sr. 32 (1747).

⁶ *Hayes v. Hayes*, 21 N. J. Eq. 265 (1871); *Appeal of Mendinhal*, 124 Pa. 387 (1889).

⁷ *Locke v. James*, 11 M. & W. 901 (1843).

⁸ *Powell v. Powell*, L. R. 1 P. & D. 209 (1866).

(5) Where the testator revokes a provision of his will by a later instrument which is properly executed, but which cannot take effect because of some matter *dehors* the instrument, as, *e. g.*, a mortmain act.⁹

The principal case falls within the last-described class. In this group of cases the courts almost always refuse to apply the doctrine. Where the testator has expressly stated his intention to revoke and has not stated any supposed facts in such a way as to condition his revocation thereon, the revocation is absolute and evidence of matters *dehors* the instrument is not receivable. On principle there seems to be little reason why, if the doctrine is a sound one, it should not be applied here as well as in those cases where it is held to apply, for the intention of the testator in case of a failure of his later disposition is no more a matter of conjecture than in other cases; but the line is clearly drawn by the authorities.

Within the last-named group of cases, however, the principal case represents a type as to which there has been some uncertainty; *viz.*, where the later instrument in terms revokes, but its effect is merely to cut down an earlier gift. The point seems to have arisen oftener in Pennsylvania than elsewhere, and in several decisions the Supreme Court of that state has taken the position that in such cases the later provision should be considered a revocation only *pro tanto* of the gift in the earlier instrument, and not an absolute revocation of it and a new gift, as the language would seem to indicate. So, where a testator revoked an earlier gift of a sum of money to a charity and left the sum to trustees, who should pay the interest to certain relatives during their lives and then pay the whole to the same charity, the court considered that the codicil merely postponed the time of payment, and held that there was no revocation, although the testator stated that he "annulled and revoked."¹⁰ Likewise, where the testator revoked several bequests and directed that the sums so released should be added to the residue of his estate, and further directed that the residue be divided into seven instead of six shares as provided by the will, the court found no revocation of the former gift or part of the residue to a charity, but merely a cutting down of the share given.¹¹ These decisions, in a state whose cases¹² have gone as far as any to discredit the entire doctrine, are illustrations of the unsatisfactory state of the law on this subject.

The decision in the principal case seems not only to be in thorough accord with the strong tendency of the American courts,

⁹ Tupper v. Tupper, 1 K. & J. 665 (1855); Hairston v. Hairston, 30 Miss. 276 (1855); Dunham v. Averill, 45 Conn. 61 (1877); Commrs. v. Scott, 88 Minn. 386 (1903); McIntyre v. McIntyre, 120 Ga. 67 (1904).

¹⁰ Sloan's Appeal, 168 Pa. 422 (1895).

¹¹ Morrow's Estate, 204 Pa. 484 (1903).

¹² Emernecker's Estate, 218 Pa. 369 (1907); Melville's Estate, 245 Pa. 318 (1914).

but with the sound public policy which led to the enactment of the Statute of Frauds and the later wills acts in England and in this country. Where a testator has unconditionally stated his intention to revoke an earlier testamentary paper and accompanied it with a different disposition of his property, it is a matter of conjecture what he would have intended had he known that his later disposition would fail. When the courts attempt to determine that intention, serious difficulties are certain to follow. The policy of all our statutes has been to require testamentary papers to fulfill certain formalities, in order to do away with proof of wills by parol testimony. It is an inherent weakness of the doctrine of dependent relative revocation that it introduces parol testimony into all cases where it is applied, and it seems best, therefore, that it should be strictly limited in its operation.

W. W. S.

QUASI-CONTRACT—WORK AND LABOR—FRAUD—A difficult problem arises where compensation is sought for services rendered in the family relation. Express contracts under such circumstances are rare, and in the absence of a contract recovery is almost impossible. Nor will the law imply a contract of this sort. The rule is that services thus rendered will be presumed gratuitous.¹ The party seeking recovery is thus left to his quasi-contractual remedy. In many jurisdictions, however, the quasi-contractual action is restricted to cases in which a definite sum of money has come into the hands of the party sought to be charged; in these jurisdictions the party seeking repayment for his services is apparently without a remedy.²

In a jurisdiction where the quasi-contractual action is not so restricted,³ other limitations must be taken into account. The presumption above mentioned, that the services were gratuitous, must be rebutted, and this, it seems, can be done only where fraud is shown to have been perpetrated.⁴

A great deal of work is doubtless performed with a vague expectation of future reward by persons more or less remotely related to the beneficiary—witness the extreme solicitude with which a galaxy of relatives attend the illness of a dying testator. When the anticipated return has not been realized, the resort is usually and necessarily to the action *ex quasi contractu*. It is, however, recognized that such actions are in the nature of an afterthought, the result of disappointed expectations. The lips of an

¹ Kingston v. Roberts, 137 S. W. 1042 (Mo. 1913).

² Graham v. Stanton, 177 Mass. 321 (1901).

³ Blowers v. Southern Ry. Co., 74 S. C. 221 (1906).

⁴ Peter v. Steel, 3 Yeates 250 (Pa. 1800).